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**DynCorp and American Postal Workers Union, Local
164, AFL-CIO.** Case 9-CA-42012

August 24, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on May 23, 2005, the General Counsel issued the complaint on May 26, 2005, alleging that the Respondent has violated Section 8(a)(1) and (5) of the Act by refusing the Union's request to bargain following the Union's certification in Case 9-RC-17352. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Sections 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with an affirmative defense, admitting in part and denying in part the allegations in the complaint.

On June 14, 2005, the Acting General Counsel filed a Motion for Summary Judgment. On June 17, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the Union's certification on the ground that the Board erred in setting aside the initial election, based on the Union's objections, and directing a second election.¹

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate*

¹ The Board's decision setting aside the initial election and ordering a rerun election is reported at 343 NLRB No. 124 (2004).

Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the repair of postal mail transportation equipment at and out of its West Chester, Ohio facility.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations described above, performed services valued in excess of \$50,000 for the United States Postal Service which, in turn, meets the Board's jurisdictional standards.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that American Postal Workers Union, Local 164, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the second election held April 6, 2005, the Union was certified on April 14, 2005, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees employed by the Respondent at its West Chester, Ohio facility, but excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On about April 25, 2005, the Union, in writing, requested that the Respondent recognize and bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about April 28, 2005,

² Chairman Battista dissented from the ordering of a second election in the underlying representation case and would have found that the Respondent did not engage in objectionable conduct warranting a new election. 343 NLRB No. 124, slip op. at 5-7. While he remains of that view, he agrees that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). In light of this, and for institutional reasons, Chairman Battista agrees with the decision to grant the Acting General Counsel's Motion for Summary Judgment.

Member Schaumber did not participate in the underlying representation proceeding. However, he agrees that the Respondent has not raised any new matters warranting a hearing in this proceeding, and that summary judgment is therefore appropriate.

the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By failing and refusing since about April 28, 2005, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, DynCorp, West Chester, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with American Postal Workers Union, Local 164, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees employed by the Respondent at its West Chester, Ohio facility, but excluding all office clerical employees, and all pro-

fessional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in West Chester, Ohio, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 28, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 24, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with American Postal Workers Union, Local 164, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees employed by us at our West Chester, Ohio facility, but excluding all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

DYNACORP